

EX PARTE OR LATE FILED

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March 28, 1997

From: [illegible]
To: [illegible]

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

**EX PARTE
PRESENTATION**

Re: *State Tariffing Requirements of the Commission's Orders in
Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996,
CC Docket No. 96-128*

Dear Mary Beth:

Following up on one of the subjects we raised on behalf of the American Public Communications Council ("APCC") in our meeting yesterday, the following requirements, in our view, are clearly and indisputably set forth in the Payphone Orders¹ regarding state tariffing of local exchange carrier ("LEC") services to payphone service providers ("PSPs").

In Paragraphs 162 and 163 of the Reconsideration Order, the Commission required LECs to tariff with state commissions "nondiscriminatory basic payphone services that enable independent providers to offer payphone services" using either "smart" or "dumb" payphones. *Id.*, ¶ 162. These services include, at a minimum, the "COCOT" line and associated network usage, to which independent PSPs using "smart" payphones currently subscribe. These services also include any "unbundled features or functions," such as answer supervision and blocking and screening functions, that the LEC provides to its own payphones. *Id.*, ¶¶ 162-63. In addition, the central office coin services used by LECs to control their "dumb" payphones must also be tariffed at the state level. The order

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order").

041

is clear and explicit about these requirements.² The state tariffs for *all* these services "must be (1) cost-based, (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services, and (3) nondiscriminatory." *Id.*, ¶ 163.

The Commission further required that, to be "cost-based," state tariffs must meet the Computer III pricing guidelines, and specifically the "new services test," which is set forth in Section 61.49(g)(2) of the Commission's rules, 47 CFR § 61.49(g)(2).³

The Payphone Orders required LECs to file new or revised tariffs meeting requirements (1), (2), and (3) stated above, and the Computer III pricing guidelines. These tariff filings were required to be filed no later than January 15, 1997. States must review these new filings to ensure compliance. Where tariffed rates and terms for any service offered to PSPs have not been revised, states must review the LEC's existing tariff for that service to ensure that it meets the above requirements. The state's review must include application of the new services test to both newly filed *and* existing tariffs for the basic payphone line and unbundled features. If existing or newly filed tariffs fail to meet the requirements discussed above, states must require LECs to modify those tariffs to comply with these requirements. If a state is unable to complete this review, then the state should direct the LEC to refile its new and existing tariffs with the FCC, so that a timely review may be conducted. Reconsideration Order, ¶ 163.

² APCC also contends that the Reconsideration Order requires coin services (i.e., coin supervision, coin counting, and call rating) to be tariffed separately from the "basic payphone line." APCC further contends that these services are properly defined as "unbundled features or functions" that must be tariffed at the federal as well as the state level. However, even if APCC's contentions are incorrect, it is clear that the LEC's coin services, as well as the other services described in the text, must at a minimum be tariffed in the states at cost-based rates meeting the new services test.

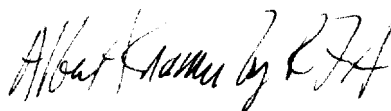
³ The "new services test" is further explained in Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, 6 FCC Rcd 4524, 4531 (1991), ¶¶ 38-44 ("New Services Test Order"). Under the "new services test," absent special circumstances warranting a "risk premium," rates for a service may not recover more than the "direct costs" of the service plus "a reasonable portion of the carrier's overhead costs." 47 CFR § 61.49(g)(2); New Services Test Order, ¶¶ 42-44.

Mary Beth Richards
March 28, 1997
Page 3

The reasons that LEC tariffs for payphone services must meet these requirements are twofold. First, cost-based, nondiscriminatory rates for *all* LEC network services to PSPs are necessary to "promote competition among payphone providers and promote the widespread deployment of payphone services" as Congress intended. 47 U.S.C. § 276(b). It would not promote competition if LECs applied the "new services" test *only* to new, bundled "coin line" service offerings that would be used primarily by their own payphone units, while continuing to charge excessive, non-cost-based prices for basic "COCOT" services that are relied upon by independent providers. Second, after the deregulation of the local coin calling rate takes effect in October 1997, cost based rates for all network services to PSPs will ensure that, under competitive conditions, calling rates at payphones are as close as possible to the actual costs of providing payphone service, so that the consumer does not pay unnecessarily high charges for payphone calls.

LECs must comply with the tariffing requirements discussed above before they are eligible to receive dial-around compensation. The Commission ruled that ". . . LECs will be eligible for compensation like other PSPs when they have completed the requirements for implementing our payphone regulatory scheme to implement Section 276." Reconsideration Order, ¶ 131. The checklist provided in Paragraph 131 specifically includes, as items (5) and (6), the state tariffing requirements discussed above. As shown above, in order to meet those requirements, LECs must do more than simply file tariffs for "coin line" services. A LEC must ensure that *all* its tariffs for new *and* existing services to PSPs, LEC and independent, meet the cost-based pricing and nondiscrimination requirements described above. The Chief of the Common Carrier Bureau is authorized "to make any necessary determination as to whether a LEC has complied with all requirements as set forth above." *Id.*, ¶ 132.

Sincerely,

A handwritten signature in dark ink, appearing to read "Albert H. Kramer by RJA". The signature is fluid and cursive, with the initials "RJA" being particularly prominent at the end.

Albert H. Kramer

AHK/nw

Mary Beth Richards
March 28, 1997
Page 4

cc: Tom Boasberg	Craig Brown
Jim Coltharp	Christopher Heimann
Dan Gonzalez	Michelle Carey
Jim Casserly	Michael Pryor
A. Richard Metzger	Michael Carowitz
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